

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Jerrold Tomlison, <i>et al.</i>,)	
)	
Plaintiffs,)	CASE NO. C2 03 706
)	
v.)	JUDGE SARGUS
)	
The Kroger Company, <i>et al.</i>,)	MAGISTRATE ABEL
)	
Defendants.)	

**ORDER APPROVING SETTLEMENT OF CLASS ACTION AND PAYMENT OF
ATTORNEYS FEES**

This matter came before the Court on November 3, 2008, pursuant to notice of a Fairness Hearing as required under Federal Civil Rule 23(e) where the parties have reached a settlement in a class action. The parties filed their Joint Motion of All Parties for Approval of Settlement of Class Action filed on October 6, 2008. Attached to the Joint Motion was a Stipulation of Settlement signed by all parties and Schedule A, which is a calculation of disbursements to members of the plaintiff class. A copy of Schedule A, representing the proposed disbursement of all settlement funds is attached hereto as Exhibit A. A Notice of Settlement to Members of Plaintiff Class and Notice of Fairness Hearing was sent to all members of the plaintiff class on October 8, 2008, pursuant to the Court's Preliminary Order Approving Settlement of Class Action filed October 8, 2008. Plaintiffs' counsel filed their Application for Attorneys fees on October 7, 2008. Plaintiffs have advised the Court that they have retained Rust Consulting, Inc. of Minneapolis, Minnesota to act as Settlement Administrator.

The Notice advised all members of the plaintiff class that they could file written

objections to the proposed settlement and to the application by plaintiffs' counsel for payment of attorneys fees, and that such objections must be filed with the Settlement Administrator by October 31, 2008. Plaintiffs' counsel has represented to the Court that the Settlement Administrator has reported that it has received no mail from any members of the plaintiff class. Similarly, no objections to the proposed settlement or to the payment of attorneys fees have been identified by any of the parties or have been sent to the Court. No members of the plaintiff class have appeared at the Fairness Hearing to object to either the settlement or the payment of attorneys fees.

The Court has reviewed the Joint Motion of All Parties for Approval of Settlement of Class Action and Plaintiff Counsels' Application for Attorneys Fees. Based upon the Court's review of these documents, the fact that no members of the plaintiff class have objected to either the settlement or the application for attorneys fees and for the reasons stated at the Fairness Hearing conducted November 3, 2008, the Court hereby makes the following findings:

1. All members of the plaintiff class have been given notice of the proposed settlement and the application for attorneys fees by plaintiffs' counsel, their right to opt out or to opt in to the settlement;
2. No objections to the settlement or the application for attorneys fees have been made by members of the plaintiff class. No members of the plaintiff class have opted out of the settlement, and one member of the plaintiff class, Gary King, has opted in;
3. The proposed settlement is fair, reasonable and adequate, and meets the requirements of Federal Civil Rule 23(e)(2).
4. Pursuant to the Stipulation of Settlement, the parties shall create a Qualified Settlement Fund to be funded by defendants, who shall deposit with the Settlement

Administrator within 30 days of the date of this Order the following amounts:

- a. \$500,000 from Kroger Co.
- b. \$67,500 from International Brotherhood of Teamsters
- c. \$30,000 from Local 413 of International Brotherhood of Teamsters.

5. Rust Consulting, Inc. is approved to act as the Settlement Administrator, and its fee of \$4,000 is to be paid out of the Qualified Settlement Fund.

6. Within 60 days of the date of this Order, the Settlement Administrator is to make the disbursements which total \$388,197, as shown on the attached Schedule A to all members of the plaintiff class, plus \$6,400 for the reimbursement of expenses that were advanced by certain members of the plaintiff class, also shown on Schedule A. The proposed disbursements shown on Schedule A represent a true and accurate list of all members of the plaintiff class and the amounts to be disbursed to each class member.

7. The application for attorneys fees in the total amount of \$198,967.50 is hereby approved as fair, reasonable and adequate, and the Settlement Administrator is to make the following payments of attorneys fees within 60 days of the date of this Order:

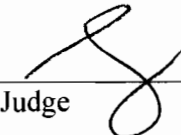
- a. \$117,500 to be paid to Strip, Hoppers, Leithart, McGrath & Terlecky Co., LPA, plus expenses of \$103.66
- b. \$55,000 to be paid to Clark Legal Associates Co., LPA
- c. \$26,467.50 to be paid to Nelson E Genshaft as representative of former counsel for plaintiffs, Wolman & Genshaft

8. All terms contained in the Stipulation of Settlement signed by all parties are hereby approved as fair, reasonable and adequate, and are incorporated by reference in this Order. Provided however, the language of No Rehire of Named Plaintiffs and Members of the

Class in Section III(H) is supplemented to include the following provision:

This provision shall not apply to any member of the plaintiff class being employed by an independent contractor that has entered into an agreement to provide transportation services to Kroger or to an individual who is an owner/operator of equipment working as an independent contractor pursuant to an agreement between that individual and Kroger to provide transportation services to Kroger.

SO ORDERED

 11-10-2008
Judge

APPROVED:

/s/ Nelson E Genshaft
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